

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DANNY L. PETERSON,

Petitioner,

v.

Case No. 06-C-0949

JODINE DEPPISH, Warden,
Fox Lake Correctional Institution,

Respondent.

ORDER

On August 29, 2006, the petitioner, Danny L. Peterson (“Peterson”), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Western District of Wisconsin. Peterson’s federal habeas petition challenges his conviction in Milwaukee County Circuit Court of one count of possession of cocaine with intent to deliver, after a plea of no contest. On February 26, 2003, Peterson was sentenced to twenty years in prison, consisting of eight years of initial confinement and twelve years of extended supervision.

On September 1, 2006, the Honorable Barbara B. Crabb issued an order transferring Peterson’s petition to this court pursuant to 28 U.S.C. § 2241(d), given that proper venue lay in this district. Subsequently, on September 29, 2006, this court ordered the respondent, Jodine Deppisch (“Deppisch”) and Peterson to comply with a briefing schedule for the processing of Peterson’s petition.

On November 20, 2006, the respondent filed her answer. Accompanying the respondent's answer were documents from Peterson's direct appeal (Dkt. 13, Ex. B-H), and transcripts from Peterson's state court proceedings (Dkt. 13, Ex. I-N). Exhibit B included Peterson's brief-in-chief and appendix filed in the Wisconsin Court of Appeals. The brief-in-chief references a Rule 809.30 motion for post-conviction relief filed by Attorney Allison Ritter with the Circuit Court of Milwaukee County. This motion is identified as Document 25 on the Record on Appeal No. 04-0066-CR. A copy of this motion has not been included in the record made available to this court.

On January 29, 2007, the respondent filed her response brief. Noted in the respondent's brief is the absence in the record of the transcript of the in camera examination of the informant conducted by the circuit court. (Dkt. 19:3).

Rule 7(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that "[i]f the petition is not dismissed summarily the judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the petition." After reviewing the parties' briefs and the record currently before this court, I have concluded that the Rule 809.30 motion for post-conviction relief and the transcript of the in camera examination of the informant are materials not found in the record which are relevant to the determination of the merits of the petition. Such being the case, the respondent will be ordered to provide this court with copies of these two additional documents.

NOW THEREFORE IT IS ORDERED that on or before March 14, 2008, the respondent shall provide to this court copies of the following documents to supplement the record:

1. Sealed Transcript of the In Camera Interview of a Confidential Informant from the Motion Hearing dated February 4, 2003.

2. Rule 809.30 motion for post-conviction relief filed on December 16, 2003 by the petitioner through his attorney Allison Ritter in Milwaukee County Circuit Court.

SO ORDERED this 11th day of February 2008, at Milwaukee, Wisconsin.

/s/ William E. Callahan, Jr.

WILLIAM E. CALLAHAN, JR.

United States Magistrate Judge